

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 10CR135
	)	
PHILLIP LEE KELLEY,	)	The Honorable Claude M. Hilton
	)	
Defendant.	)	Sentencing: November 5, 2010

POSITION OF THE UNITED STATES WITH RESPECT TO SENTENCING

The United States of America, through its attorneys, Neil H. MacBride, United States Attorney, and Scott B. Nussbaum, Special Assistant United States Attorney, in accord with 18 U.S.C. § 3553(a) and the United States Sentencing Commission, Guidelines Manual, (Nov. 2009), files this Position of the United States With Respect to Sentencing. The United States has no objection to the guideline calculations contained in the Presentence Report at this time. The United States respectfully submits that a sentence within the guideline range of 97 to 121 months is reasonable and appropriately accounts for each of the factors set forth in 18 U.S.C. § 3553(a), and accordingly requests that this Court impose such a sentence.

**Argument**

Even though the Sentencing Guidelines are advisory, United States v. Booker provides that sentencing courts “must consult those Guidelines and take them into account when sentencing.” 543 U.S. 220, 125 S. Ct. 738, 767 (2005). “[A] district court shall first calculate (after making the appropriate findings of fact) the range prescribed by the guidelines. Then, the

court shall consider that range as well as other relevant factors set forth in the guidelines and those factors set forth in [18 U.S.C.] § 3553(a) before imposing the sentence.” United States v. Hughes, 401 F.3d 540, 546 (4th Cir. 2005).

Section 3553 states that the court should consider the nature and circumstances of the offense and characteristics of the defendant. In addition, it states that the court must consider other factors, including the need for the sentence “to reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense; [and] to afford adequate deterrence to criminal conduct.” 18 U.S.C. § 3553(a)(2)(A) & (B). In addition, the sentence should protect the public from further crimes of the defendant and provide the defendant with needed correctional treatment. 18 U.S.C. § 3553(a)(2)(C) & (D). In this case, a sentence within the guideline range of 97 to 121 months of incarceration will justly punish the defendant and also reflect the seriousness of the offense.

Such a sentence reasonably and appropriately accounts for the factors set forth in 18 U.S.C. § 3553(a). The trafficking of cocaine is a serious offense which imposes enormous pecuniary and non-pecuniary costs on society. However, it is appropriate to take into account the fact that the defendant took responsibility for his actions and pled guilty. For those reasons, the government respectfully suggests that a sentence within the guideline range of 97 to 121 months is appropriate.

### **Conclusion**

For the reasons stated, the United States therefore asks this Court to impose a sentence of 97 to 121 months of incarceration.

Respectfully Submitted,

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United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of November, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Ferris Bond, Esq.  
Counsel to Phillip Lee Kelley

I hereby certify that I will cause a copy to be delivered to:

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\_\_\_\_\_/s/\_\_\_\_\_  
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